

1 THOMAS E. PEREZ  
2 Assistant Attorney General  
3 JAMES A. MCDEVITT  
4 United States Attorney  
5 Eastern District of Washington  
6 JOHN M. GADZICHOWSKI  
7 Chief  
8 ESTHER G. TAMBURU-LANDER  
9 Deputy Chief  
10 Lori B. Kisch  
11 Senior Trial Attorney  
12 United States Department of Justice  
13 Civil Rights Division  
14 950 Pennsylvania Avenue, NW  
15 Patrick Henry Building, Rm 4031  
16 Washington, D.C. 20530  
17 Telephone: (202)305-4422  
18 TYLER H.L. TORNABENE  
19 Assistant United States Attorney  
20 Post Office Box 1494  
21 Spokane, WA 99210-1494  
22 Telephone: (509) 353-2767  
23  
24

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

ROBERT BRIAN ROBINSON,

Civil Action No.CV-10-5045-LRS

Plaintiff,

CONSENT DECREE

v.

MILNE ENTERPRISES, INC., d/b/a  
MILNE, NAIL, POWER TOOL &  
REPAIR,

Defendant.

INTRODUCTION

This matter is before the Court for entry of this decree by consent of the parties

to effectuate a compromise and settlement of all claims. After review and

RECEIVED

CONSENT DECREE - Page 1

APR 16 2010

CLERK U.S. DISTRICT COURT  
SPOKANE WASHINGTON

consideration, the Court believes that entry of this decree is in the interest of justice.

1. Plaintiff, Robert Brian Robinson ("Robinson"), commenced the above entitled action in the United States District Court for the Eastern District of Washington, alleging that the Defendant Milne Enterprises, Inc., d/b/a Milne, Nail, Power Tool & Repair ("Milne") violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by failing to re-employ Robinson in the position of Assistant Manager, which is the position Robinson would have been employed in had his employment not been interrupted by Robinson's military service and by retaliating against him when he exercised his rights under USERRA.

**2. Milne denies that it has violated USERRA.**

3. Nevertheless, Robinson and Milne (collectively referred to as the "Parties"), as a result of settlement discussions, have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree. It is the intent of the parties that this Consent Decree be a final and binding settlement in full disposition of all claims alleged in the Complaint filed in this case.

## **STIPULATED FACTS**

4. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United States District Court for the Eastern District of Washington over the subject matter of this action and of the parties to this case for the purpose of entering this Decree and, if necessary, enforcing this Decree.

5. Venue is proper in this district for purposes of this Decree and any proceedings related to this Decree only. Milne agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

## **FINDINGS**

6. Having examined the terms and provisions of the Consent Decree, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of the action and the parties to this action.
  - b. The terms and provisions of this Consent Decree are fair, reasonable, and just. The rights of the parties are protected adequately by this Decree.
  - c. This Consent Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person. The entry of this Consent Decree will further the objectives of USERRA and other applicable laws and will be in the best interest of the parties.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND  
DECreed AS FOLLOws:**

## **NON-ADMISSION**

7. This Decree is being entered with the consent of the parties and shall not constitute an adjudication or finding on the merits of the case or be construed as an

1 admission by Milne of any violations of USERRA, or any other law, rule or  
2 regulation, dealing with or in connection with equal employment opportunities.  
3

4 **NON-RETALIATION**

5 8. Milne shall not take any action against any person which constitutes  
6 retaliation or interference with the exercise of such person's rights under USERRA,  
7 or because such person gave testimony or assistance or participated in any manner in  
8 any investigation or proceeding in connection with this case.  
9

10 **REMEDIAL REQUIREMENTS**  
11

12 9. Without admitting the allegations set forth in the Complaint, and in  
13 settlement of the claims of Robinson, Milne shall pay Robinson a total of \$13,500,  
14 comprised as follows:  
15

16 (a) \$6,750 in back pay, less those employee tax withholdings and  
17 employee contributions as required by law, which Milne timely shall  
18 pay to the appropriate governmental agencies on behalf of Robinson.  
19

20 Milne shall separately pay to the appropriate governmental agencies the  
21 appropriate employer's contribution due on the \$6,750 back pay portion  
22 of the total monetary award; i.e., the employer's contribution shall not  
23 be deducted from any part of the monetary award to Robinson.  
24

25 (b) \$6,750 in liquidated damages.  
26

10. Within (7) business days from the date of entry of this Decree, Milne shall pay Robinson the \$6,750 in back pay, less employee tax withholdings and employee contributions; and a portion of the liquidated damages totaling \$3,250. The remaining \$3,500 of liquidated damages shall be paid to Robinson within 90 days of entry of the Consent Decree with payments as follows: \$1,200 within 30 days of the entry of the Consent Decree; \$1,200 within 60 days of the entry of the Consent Decree; and \$1,100 within 90 days of the entry of the Consent Decree. Milne shall pay the required amounts to Robinson by mailing to Robinson a check addressed as follows:

Robert Brian Robinson  
250 Gage Blvd., Apt. 2075  
Richland, WA 99352

Milne shall provide documentary evidence of having paid Robinson by mailing a photocopy of the check evidencing payment to the following address within three (3) days of payment to Robinson:

Lori B. Kisch  
Senior Trial Attorney  
United States Department of Justice  
950 Pennsylvania Ave., NW  
Civil Rights Division  
Employment Litigation Section, PHB, Room 4031  
Washington, DC 20579

11. Milne agrees to provide Robinson with a letter of recommendation which is attached hereto as Exhibit A. Milne further agrees to withdraw its complaint

1 of theft against Robinson by sending a letter to the Pasco Police Department within  
2 seven (7) business days of the entry of this Consent Decree indicating such  
3 withdrawal. A copy of the letter to be mailed to the Pasco Police Department is  
4 attached hereto as Exhibit B. Milne shall provide documentary evidence of having  
5 sent the letter to the Pasco Police Department by mailing a copy of such letter to Lori  
6 B. Kisch at the address provided in paragraph 10 within three (3) business days of its  
7 mailing to the Pasco Police Department.

8 12. For and in consideration of the relief being provided to him described in  
9 paragraphs 9 -11 of this Decree, Robinson releases and discharges Milne from the  
10 claims identified in the Complaint filed in this case and the complaint Robinson filed  
11 with the Department of Labor, complaint number WA-2008-00003-10-G. This  
12 release and discharge of claims is subject only to Milne's compliance with the terms  
13 of this Decree.

#### **DISPUTE RESOLUTION AND COMPLIANCE**

14 13. This Court shall retain jurisdiction over this matter and will have all  
15 available equitable powers, including injunctive relief, to enforce this Decree. Upon  
16 motion of either party, the Court may schedule a hearing for the purpose of reviewing  
17 compliance with this Decree. The parties shall engage in good faith efforts to resolve  
18 any dispute concerning compliance prior to seeking a resolution of such dispute by  
19 the Court. In the event of a dispute, the parties shall give notice to each other ten (10)  
20

1 business days before moving for review by the Court. The parties may conduct  
2 expedited discovery under the Federal Rules of Civil Procedure for the purpose of  
3 determining compliance with this Decree or defending against a claim of non-  
4 compliance.

5

6 **MISCELLANEOUS**

7

8 14. All parties shall bear their own costs and expenses of litigation,  
9 including attorneys' fees.

10 15. This Consent Decree constitutes the entry of final judgment within the  
11 meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in  
12 this action.

13 16. The terms of this Consent Decree shall be binding upon the present and  
14 future directors, employees, agents, administrators, successors, representatives, and  
15 assigns of Milne and upon the heirs, successors, and assigns of Robinson.

16 17. This Consent Decree constitutes the entire agreement and commitments  
17 of the parties. Any modifications to this Decree must be mutually agreed upon and  
18 memorialized in a writing by all parties.

19 18. Milne has been informed by the United States that it may seek legal  
20 advice regarding its entry into this Consent Decree and its associated legal obligations  
21 and/or rights arising from the Decree.

19. The parties execute the Consent Decree voluntarily, knowingly and willingly.

## **EFFECTIVE DATE**

20. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

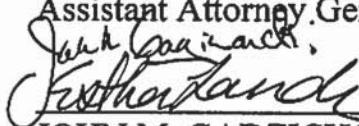
21. This Consent Decree shall expire, and this action shall be dismissed, without further order of this Court, one year from the date of the entry of this Consent Decree. Robinson may move, for good cause, to extend the decree. The Decree will not be extended, however, unless the Court grants Robinson's motion. Any such extension may be granted by the Court only for such time as is necessary to effectuate the relief set forth in this Decree.

APPROVED and ORDERED this 27th day of April , 2010.

s/Lonny R. Suko

**UNITED STATES DISTRICT JUDGE**

1 Respectfully submitted on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.  
2  
3

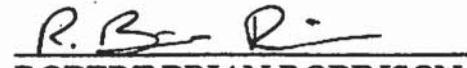
4 THOMAS E. PEREZ  
5 Assistant Attorney General  
6   
7 JOHN M. GADZICHOWSKI

8 Chief  
9 ESTHER G. TAMBURO-LANDER  
10 Deputy Chief  
11 LORI B. KISCH  
12 Senior Trial Attorney  
13 U.S. Department of Justice  
14 Civil Rights Division  
15 Employment Litigation Section  
16 950 Pennsylvania Avenue, NW, PHB  
17 Washington, DC 20530  
18 Telephone: (202) 305-4422  
19 Facsimile: (202) 514-1005  
20 Email: [John.M.Gadzichowski@usdoj.gov](mailto:John.M.Gadzichowski@usdoj.gov)  
Email: [Esther.Tamburo@usdoj.gov](mailto:Esther.Tamburo@usdoj.gov)  
Email: [Lori.Kisch@usdoj.gov](mailto:Lori.Kisch@usdoj.gov)

21 JAMES A. MCDEVITT  
22 United States Attorney  
23 Eastern District of Washington  
24 

25 TYLER H.L. TORNABENE  
26 Assistant United States Attorney  
27 Post Office Box 1494  
28 Spokane, WA 99210-1494  
Telephone: (509) 353-2767  
Facsimile: (509) 353-2766  
Email: [USA-WAE-Ttornabene@usdoj.gov](mailto:USA-WAE-Ttornabene@usdoj.gov)

Attorneys for Plaintiff

1  
2  
3   
4 ROBERT BRIAN ROBINSON  
5 250 Gage Blvd, Apt. 2075  
6 Richland, WA 99352  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiff

1  
2  
3  
4  
5  
6  
7  
8



DAVID MILNE  
Vice President  
Milne Enterprises, Inc., d/b/a  
Milne, Nail, Power Tool & Repair  
1303 W. Lewis Street  
Pasco, WA 99301  
Telephone: (509) 547-7834

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Defendant

April 9, 2007

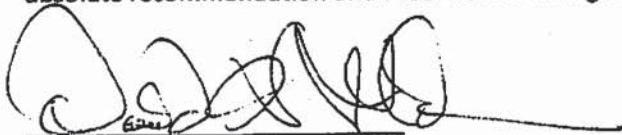
To Whom It May Concern:

I am genuinely pleased to give my professional recommendation for Brian Robinson. I am the Manager/Co-owner here at our store and was Brian's immediate supervisor for almost five years. Every day we'd spend considerable time together and I found him to be punctual, consistent, pleasant, and hard working.

Brian is a take-charge person who is able to present creative ideas and communicate the benefits of applying them. When we opened a new store, it was Brian who researched on his own to find the most effective computer system and software for us, and then presented that information to the heads of our company. He is one of the brightest people I have met over the years of running this business, and he used that intelligence to help our company get to a higher level faster than we would have without him.

During his employ, Brian worked his way from a part time sales clerk with limited duties to a full time Assistant Manager. As Assistant Manager he worked with me in overseeing and participating in day to day sales, shipping and receiving, inventory, and conducting outside sales to other businesses. He conducted himself professionally and more often than not, he would be wearing our company's uniform shirt, though not required to do so. Brian Robinson also took it upon himself to do other employee tasks so as the job would get done right in a timely manner. Even if it meant doing menial tasks such as shoveling snow, stocking shelves, setting up displays, fixing leaks in the roof and assembling equipment. He was always there for our customers, answering questions and giving concise, knowledgeable information to help them select the products they would need (all while keeping our bottom line in mind).

Sadly, Brian left our store to enlist in the military and is now pursuing an education in the medical field. Though this will surely be an enormous undertaking, Brian has shown time and time again that he is capable of seeing things through to completion and taking pride in the work he does. He has my absolute recommendation and I feel he will be a great asset to any company or organization.



David G. Milne  
Manager / Co-owner  
Milne Enterprises, Inc. d/b/a  
Milne, Nail, Power Tool & Repair

Pasco Police Department  
525 North 3<sup>rd</sup> Avenue  
Pasco, WA 99301

Re: Robert Brian Robinson and Milne, Nail, Power Tool & Repair  
Police Records Nos. 07-16182 and 08-04985

Dear Pasco Police Department:

I am writing on behalf of Milne Enterprises, d/b/a Milne, Nail, Power Tool & Repair. In February of 2008, my father, Randy Milne, filed a complaint against Robert Brian Robinson alleging that he was involved in a theft from our family store in the spring of 2007. I am writing on behalf of my family and the Milne store to withdraw all of our complaints against Robert Brian Robinson. We ask that this letter of withdrawal of our complaint be maintained in any files that exist regarding our previous complaints against Robinson.

Thank you.



\_\_\_\_\_  
David Milne  
Manager and Co-Owner  
Milne Enterprises, Inc., d/b/a  
Milne, Nail, Power Tool & Repair